In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.1780 of 1991.

Date of decision:7-12-2007.

Mohinder Kumari.

...Appellant.

Versus

Prem Lata and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: None for the appellant.

Mr. G.S.Jaswal Advocate for respondent Nos.4,6 and 7.

...

K. C. Puri, J.

Judgment.

This is a Regular Second Appeal preferred by Mohinder Kumari, one of the defendants before the trial Court against the judgment and decree dated 1.6.1991 passed by Shri A. S. Sodhi, the then Additional District Judge, Hoshiarpur.

The brief facts of the case are that Prem Lata, plaintiff, now respondent in this appeal, filed a suit for declaration on the averments that she was married with Shri Hari Chand Badial but no issue was born. With the sale proceeds of golden ornaments and other items of Istri Dhan of the plaintiff, Prem Flour Mill was installed. She was the sole owner of the mill.

Hari Chand was owner in possession of land in suit along with some houses. After the death of Hari Chand on 3.7.1983, she along with defendant Nos.1 to 4, who are son and daughters of previous wife of Hari Chand were entitled to succeed to the property of Hari Chand in equal shares. Hari Chand had not executed any Will of his estate in sound disposing mind.

It is further pleaded that if defendant Nos.4 to 6 succeeded in proving the genuineness of the alleged Will dated 12.7.1983, then she is entitled to be maintained from the property left by Hari Chand deceased as his legally wedded wife as she has no source of income. She claimed maintenance at the rate of Rs.1,000/- per month.

Defendant No.1 Bachittar Singh contested the suit. He denied that the plaintiff was married with Hari Chand, deceased. He alleged that Prem Lata was married with one Behrama. He also denied that the plaintiff and Hari Chand lived as husband and wife. Prem Lata plaintiff never spent any money for the construction of the house or flour mill. Hari Chand had executed a valid Will in sound disposing mind in favour of defendant Nos.4,5 and 6 and as such the plaintiff was not entitled to any share in the property left by the deceased. It was also denied that the plaintiff was entitled to any maintenance from the property of Hari Chand deceased. The plaintiff was in possession of one room as a trespasser.

Defendant No.5 filed separate written statement and adopted the pleas raised by defendant No.1. He alleged that the plaintiff had earlier filed a civil suit claiming the ownership of the flour mill and that suit was dismissed. The present suit was barred by the principles of resjudicata.

Defendant Nos.4,6 and 7 filed separate written statements.

They also denied the relationship of the plaintiff and Hari Chand deceased. Hari Chand was not the owner of the property in dispute at the time of his death. They also pleaded that Hari Chand executed a valid Will in sound disposing mind in favour of defendant Nos.5 and 6.

From the pleadings of the parties, seven issues were framed.

The plaintiff, in support of her case, examined Tarsem Lal, Karam Chand, Rattan Lal Clerk, Punjab National Bank, Harbans Singh, Kundu Ram and she also appeared in the witness-box as her own witness.The defendants examined Babu Ram, Nath Singh Bedi, Deed Writer, Hardial Singh, Brij Pal Singh, Vijay Singh Badial. Defendants Mohinder Kumari and Sushil Kumari also appeared in the witness box.

The learned trial Court, after appraisal of evidence, returned findings on issues No.1,2 and 5 in favour of the plaintiff and against the defendants. Finding on issue No.3 regarding the execution of the Will was returned against the defendants. Issue Nos.4 and 6 were also decided against the defendants. The suit of the plaintiff was consequently dismissed.

Feeling dis-satisfied with the above-said judgment and decree, Sushil Kumari, Vijay Kumar and Masya Devi defendants in the trial Court preferred an appeal. The matter was compromised between Sushil Kumari and Vijay Kumar on one hand and Prem Lata, on the other. Prem Lata admitted the execution of Will, Exhibit D1 and she was given the right of maintenance by realizing the rent of agricultural land situated in village Makowal.

Feeling aggrieved by the above-said judgment and decree, Mohinder Kumari appellant has preferred the present appeal.

Mohinder Kumari has pleaded in the grounds of appeal that she was not a signatory of any compromise. The validity of Will has not been determined by the first Appellate Court. According to natural succession, Mohinder Kumari appellant, Prem Lata, Savitri Devi, Sushil Kumari and Bachittar Singh were the legal heirs of Hari Chand and she was entitled to 1/5th share in the inheritance of Hari Chand. The learned trial Court has observed that the Will is a suspicious document. The first Appellate Court has up-held the validity of Will. Prem Lata had joined hands with the appellant before the first Appellate Court.

This is a Regular Second Appeal and the question of law has not been formulated by the appellant in accordance with Section 100 of C.P.C and in view of authority reported as **Kulwant Kaur Versus Gurdial Singh**, AIR 2001 Supreme Court 1273. Since the appellant has not come present, so I myself formulated the question of law as under:-

"Whether one of the legal heirs can make a statement regarding the validity of Will qua the share of other natural heir?

None has appeared on behalf of the appellant. However, the judgment of the first Appellate Court does not stand the test of legal scrutiny. The Will, Exhibit D1, executed by Hari Chad has been held to be a suspicious document by the learned trial Court. Mohinder Kumari has neither joined in the compromise nor is signatory to any compromise before the first Appellate Court. The fact remains that once a party propound a Will, in that case,the said party has to prove the fact that the same is legal and valid document and is the last testamentary of deceased. Mere admission of Will by one of natural heirs does not bind the other legal heir.

So far as the fact that Prem Lata is the widow, Bachittar Singh is son, Savitri Devi, Sushil Kumari and Mohinder Kumari are the daughters of Hari Chand is not disputed by the counsel for the contesting respondents. Savitri Devi, Mohinder Kumari and Sushil Kumari have not admitted the Will of Hari Chand as a valid document. The said Will has been stated to be a suspicious document as per findings of the learned trial Court. The first Appellate Court has not taken into account the fact that the other legal heirs of Hari Chand have not admitted the Will in question as a valid document.

Learned counsel for the beneficiaries has contended that since the suit has been filed by Prem Lata and she has compromised and on that count, the Will is a valid document. That submission cannot be accepted. Prem Lata can accept the Will qua her share alone. However, the fact remains that Prem Lata has also got right of maintenance by realizing the rent from the suit property. Indirectly, the beneficiaries of the Will have admitted the right of Prem Lata by ignoring the Will. Moreover, where the validity of the Will is in question, in that case, the first Appellate Court should have determined the fact whether the Will in question is a valid document or not.

In view of the above discussion, the above question of law formulated stand determined against the contesting respondents and in favour of the appellant.

Consequently, this appeal is accepted. The impugned judgment and decree dated 6.1.1991 passed by Shri A.S.Sodhi, the then Additional District Judge, Hoshiarpur being against the facts and law stand set aside. The case is remanded back to the first Appellate Court for giving a finding

regarding the validity of Will, Exhibit D1, in view of the evidence on the record.

The respondents are directed to appear before the first Appellate Court Hoshiarpur on 21.1.2008. The first Appellate Court shall give notice to the appellant and decide the appeal in accordance with law.

December 7 ,2007. (K. C. Puri)
Jaggi Judge